

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

Revised May 18, 2012

HEARING DATES:

NORTHERN CALIFORNIA

Monday, December 5, 2011 at 2:00pm

Department of Consumer Affairs

Hearing Room

1625 North Market Blvd

Sacramento, California 95834

**SUBJECT MATTER OF THE
PROPOSED REGULATIONS:**

AB 2289 Penalties

- I. Citations and Administrative Fines;
- II. Authority to Issue Citations and Administrative Fines;
- III. Administrative Fine Amounts;
- IV. Compliance with Citations/Orders of Abatement;

SECTIONS AFFECTED:

§§ 3394.25, 3394.26, and 3394.27, of Title 16, Division 33, Chapter 1, Article 11.1, California Code of Regulations

SPECIFIC PURPOSE OF THE REGULATORY PROPOSAL:

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs (DCA) is proposing the following regulation in order to adopt citation and administrative fine authority pursuant to the Health and Safety Code (H&S) section 44050.

Additionally, BAR is mandated by H&S section 44050 to incorporate a penalty schedule to assign fine amounts for specific violations.

BAR is proposing to adopt the following regulations:

- I. **Article 11.1 Citations and Administrative Fines, Chapter 1, Division 33, Title 16, California Code of Regulations:** Article 11.1 will be created to contain regulations specific to citations and administrative fines for Smog Check violations.
- II. **Authority to Issue Citations and Administrative Fines:** This section

provides BAR the ability to issue citations to a licensee or contractor for violations of H&S section 44000 et seq. and regulations adopted pursuant thereto. (§3394.25)

- III. Administrative Fine Amounts:** BAR may issue citations and administrative fines to any licensee or contractor, who has violated H&S 44000 et seq. and regulations adopted pursuant thereto. Maximum fines for violations are listed in Table I, Administrative Fine Schedule. (§3394.26)
- IV. Compliance with Citations/Orders of Abatement:** If the cited person who has been issued an order of abatement cannot complete the correction within the time set in the citation, due to uncontrollable factors and after reasonable diligence, the cited person may request an extension from BAR. The request for an extension must be in writing and within the time set in the citation. If the administrative fine is not paid, it will be added to the cited person's license or registration renewal fee. Licenses and registrations will not be renewed without the payment of the renewal fee and/or administrative fine(s). (§3394.27)

FACTUAL BASIS:

BAR was established within the Department of Consumer Affairs in 1972 with the enactment of the Automotive Repair Act¹. Senate Bill (SB) 51 (Beilenson, Chapter 1578, Statutes of 1971), mandated a statewide automotive repair consumer protection program. In furtherance of its mandate, BAR administers a statewide licensing and enforcement program.

SB 1107 (Presley, Chapter 703, Statutes of 1985) provided BAR the authority to issue citations and to assess civil penalties against licensed Smog Check stations for violations of the inspection and maintenance program.

Assembly Bill (AB) 2289 (Eng, Chapter 258, Statutes of 2010) addressed challenges raised in a recent report concerning the Smog Check Program (Program). One of these recommendations was to adopt more stringent fine authority to help address improper Smog Check inspections. AB 2289 addressed this recommendation by repealing the old penalty schedule listed in statute and replaced it with broad authority to fine from \$100 up to \$5,000, effectively doubling BAR's maximum fine authority. Additionally, AB 2289 mandated BAR to include a penalty schedule in regulation that specifies fine amounts for violations of H&S 44000 et seq. and regulations adopted pursuant thereto.

As part of BAR's consumer protection mandate, BAR regulates Automotive Repair Dealers, Lamp and Brake stations and adjusters, and Smog Check stations and technicians. BAR receives and mediates complaints from the public, investigates violations of the Automotive Repair Act, Smog Check laws, and associated regulations.

¹ Business and Professions Code § 9880, et seq.

When appropriate, cases are referred to the Attorney General's office or law enforcement authorities for administrative action, civil and/or criminal prosecution.

BAR separated violations of the H&S and California Code of Regulations (CCR) into three groups. Each group was assigned different minimum and maximum fine amounts. BAR relied on the following criteria in determining the fine range of each violation:

- \$250 - \$1,000

These violations would cause minimal harm to consumers as they are, in large, related to administrative deficiencies (i.e., record keeping, reporting requirement, advertisement, etc.). These violations do not impact air quality and are typically easily correctable violations.

- \$750 - \$3,000

Violations involving instances representing a conflict of interest; unfair business practices; failure to provide BAR staff access, information, or other cooperation necessary to conduct an onsite inspection; entering false information into the EIS; or inappropriate parts, tools, or equipment, warrant an elevated fine of \$750 - \$3,000. These violations may have a minor to moderate financial impact on consumers and/or result in a minor impact on air quality.

- \$1,000 - \$5,000

Deviating from industry standards for proper diagnosis or repair, failure to meet equipment specifications, entering any false information into the inspection equipment, and the issuance of repair cost waivers or economic hardship extensions, can result in significant harm to air quality and/or represent an intent to subvert requirements prescribed by BAR for financial gain. These citable offenses represent the most egregious actions in the Smog Check Program and require the use of the highest penalties. Violations of these provisions will result in a fine ranging from \$1,000 - \$5,000.

Violations of H&S code sections 44014 and 44031.5 and CCR section 3340.10 are not included in the proposed penalty schedule because they involve unlicensed activity. Violations involving unlicensed activity are covered by the provisions of Title 16, Article 11.2. In addition, BAR removed CCR section 3340.25 as this regulation has been repealed.

Further, BAR determined that violations of CCR sections 3340.22 and 3340.22.1 are minor in nature and can be easily corrected through the use of an order of abatement without a monetary fine. As a result, BAR did not include them in the proposed penalty schedule.

BAR has determined that H&S sections 44002 and 44060 and CCR section 3340.37 provide BAR with authority and do not represent a specific violation. As a result, BAR did not include these sections in the proposed penalty schedule.

The penalty schedule specifies fine amounts for violations of the H&S section 44000 et. seq. and regulations adopted pursuant thereto. In assessing a fine amount H&S section 44050 requires BAR to consider the following criteria:

1. The nature, gravity, severity, and seriousness of the violation.
2. The persistence of the violation.
3. The good faith or willfulness of the violator.
4. The history of previous violations by that violator, including the commission of numerous and repeated violations.
5. The failure to perform work for which money was received.
6. The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.
7. The failure to make restitution to consumers affected by the violation.
8. The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.
9. The degree of incompetence or negligence in the performance of duties and responsibilities.
10. The purposes and goals of this chapter and other matters as may be appropriate.

To assist in the development of the proposed regulation BAR conducted two workshops to solicit public input. Recommendations to improve the regulation have been included in this proposal.

UNDERLYING DATA:

- AB 2289 (Eng, Chapter 258, Statutes of 2010).

BUSINESS IMPACT:

These regulations only strengthen the BAR's ability to enforce its laws and regulations and provide consumers additional protection from unscrupulous behavior. The proposed regulations will not have any significant adverse economic impact on businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be effective as and less burdensome to the affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

Alternative 1: Do not implement the provisions of the H&S section 44050. This option is at odds with BAR's mandate to provide consumer protection and administration of a model motor vehicle emissions reduction program. This option does not create any additional costs or provide any benefits.

Alternative 2: Adopt a penalty schedule with a maximum fine authority of \$2,500. Adopting a penalty schedule with lower fines was rejected because higher fines are more effective than lower ones in acting as a deterrent.